

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION

CREOLA COTTON,	§	
Plaintiff,	§	
	§	
v.	§	CIVIL ACTION NO. 4:19-cv-00730
	§	
KROGER TEXAS L.P., D/B/A KROGER	§	
Defendant.	§	JURY DEMANDED

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**DEFENDANT’S NOTICE OF REMOVAL**

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TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Pursuant to 28 U.S.C. §§1441 and 1446, Defendant Kroger Texas L.P., D/B/A Kroger (“Defendant”) in the cause styled “Creola Cotton v Kroger Texas L.P., D/B/A Kroger,” originally pending as Cause No. 88794 in the County Court of Lamar County, Texas, files this Notice of Removal of the cause to the United States District Court for the Eastern District of Texas, Sherman Division.

**I.  
BASIS FOR REMOVAL**

The basis of the removal of this action is diversity jurisdiction under 28 U.S.C. §1332. Diversity jurisdiction exists in this case because there is complete diversity of citizenship between the parties. Defendant is not a citizen of the State of Texas, and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs. *See* 28 U.S.C. §1332.

**II.**  
**DIVERSITY JURISDICTION**

At the time of the accident giving rise to this case, Plaintiff Creola Cotton was a resident and citizen of the State of Texas.

Kroger Texas L.P., at the time of the initial filing of this action and at the time of the removal of this action, was and is a corporation formed under the laws of Ohio with its principal place of business in Ohio. Kroger Texas L.P. has never been a resident of, incorporated in, or had its principal place of business in the State of Texas.

**III.**  
**FACTUAL BACKGROUND**

Plaintiff claims that, on or about January 1, 2018, she entered the Kroger store located at 1310 Clarksville Street, Paris, Texas 75460, and there she slipped and fell on a white powdery substance causing her severe and incapacitating injury. Plaintiff filed suit on August 6, 2019, in the 62<sup>nd</sup> District Court of Lamar County, Texas, as Cause No. 88794, captioned *Creola Cotton v Kroger Texas L.P., D/B/A Kroger*, asserting a negligence cause of action (premises liability) against Defendant.

**IV.**  
**THE AMOUNT IN CONTROVERSY**

Plaintiff judicially admits in her Original Petition that she seeks monetary relief over \$75,000.00.<sup>1</sup> Specifically, Plaintiff claims damages for: past and future medical expenses, past and future physical pain, and past and future physical impairment.<sup>2</sup> In addition, Plaintiff seeks

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<sup>1</sup> See Plaintiff's Original Petition, at page 1, ¶ I.

<sup>2</sup> See Plaintiff's Original Petition, at page 3 and 4, ¶ VII.

exemplary or punitive damages.<sup>3</sup> As a result, the amount in controversy in this case exceeds \$75,000.00, exclusive of interest and costs, and this case is removable.<sup>4</sup>

**V.  
REMOVAL IS TIMELY**

This removal is timely because it is filed “within thirty days after receipt, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has just become removable.” 28 U.S.C. §1446(b). Kroger Texas L.P. first became aware this case might be removable on September 5, 2019 when Kroger was served with Plaintiff’s Original Petition. Accordingly, this removal is timely because it is made within thirty days after the receipt by Defendant of the document which first demonstrated the case was removable. Moreover, more than one year has not passed since the commencement of the action in state court on August 6, 2019. 28 U.S.C. §1446(b).

**VI.  
VENUE**

Venue is proper in this district under 28 U.S.C. §1441(a) because this district and division embrace the place in which the removed action has been pending.

**VII.  
PROCEDURAL REQUIREMENTS**

Defendant has filed a Notice of Filing Notice of Removal to Federal Court with the Clerk of the County Court of Lamar County, Texas, simultaneously with the filing of this Notice of Removal.

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<sup>3</sup> See Plaintiff’s Original Petition, at page 5, ¶ XI.ii.

<sup>4</sup> See *S.W.S. Erectors, Inc. v. Infax, Inc.*, 72 F.3d 489, 492 (5th Cir. 1996); see also *Laughlin v. Kmart Corp.*, 50 S.W.3d 871, 873 (10th Cir. 1995) (amount in controversy is ordinarily determined by allegations in complaint).

Pursuant to Local Rule CV-81, the following documents are attached hereto for the Court's reference:

<u>Exhibit</u>	<u>Document</u>
1	A Certified copy of the state court docket sheet ("Register of Actions") as of October 7, 2019;
2	Plaintiff's Original Petition (filed August 6, 2019);
3	Defendants' Original Answer (filed September 26, 2019);
4	A copy of all process and orders served upon Defendant;
5	Case Information, including: <ul style="list-style-type: none"> <li>(a) A list of all parties and current status of the removed case;</li> <li>(b) Current status of the case;</li> <li>(c) A complete list of attorneys involved, including bar numbers, addresses, telephone numbers, and party or parties represented by her;</li> <li>(d) A record of which parties have requested trial by jury;</li> <li>(e) The name and address of the court from which the case is being removed; and</li> </ul>
6	Civil Cover Sheet.

**WHEREFORE, PREMISES CONSIDERED,** Defendant respectfully prays that this case be removed to the United States District Court for the Eastern District of Texas, Sherman Division.

Respectfully submitted,

/s/ Jack Ormond

**Jack Ormond**

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**ATTORNEY FOR DEFENDANT**

**CERTIFICATE OF SERVICE**

I certify that this document was served on all counsel of record in accordance with the Federal Rules of Civil Procedure on October 7, 2019.

/s/ Jack Ormond

Jack Ormond